IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 1095 of 1999

For Approval and Signature:

HONOURABLE MR.JUSTICE A.M.KAPADIA
HONOURABLE MS.JUSTICE H.N.DEVANI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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ABDULWAHAB ABDULMAJID BALOCH - Appellant(s)
Versus
STATE OF GUJARAT - Opponent(s)

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Appearance :
MR JM PANCHAL with MR KJ PANCHAL for Appellant
MR. A.J.DESAI, APP for Opponent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE A.M.KAPADIA
and
HONOURABLE MS.JUSTICE H.N.DEVANI

Date : 13th, 14th, 16th and 24th August 2007

ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE A.M.KAPADIA)

1. Appellant ("the Accused" for short) along with other 25 accused was charged and tried by the learned Additional City Sessions Judge, Court No.4, Ahmedabad in Sessions Case No. 13 of 1997 and 14 of 1997 for commission of the offence under Sections 302, 365, 387, 332, read with Section 34, 120B, 201, 202 of the Indian Penal Code ("the IPC" for short), and under Section 21(1)(a) and 27 of the Arms Act, on the accusation that the Accused and the other accused persons belonging to the gang of Abdul Latif Abdulwahab Sheikh – accused no. 24, who was supplying the foreign liquor, hatched a conspiracy to kill Bhagwandas Dwarkadas Sindhi, who was importing foreign liquor and not purchasing the same from deceased Abdul Latif Abdulwahab Sheikh. As a part of that conspiracy, deceased was kidnapped and thereafter the Accused fired bullet from his foreign made revolver, which he has possessed illegally, and caused the death of Bhagwandas Dwarkadas Sindhi.

2. At the end of the trial, as the Accused was found guilty of committing murder of Bhagwandas Dwarkadas Sindhi, he was convicted vide judgment and order dated 19.8.1999 for commission of the offence punishable under Section 302 of the IPC and was sentenced to suffer imprisonment for

life and fine of Rs.10,000/- in default SI of 3 months, whereas for remaining offences, the accused was acquitted.

3. During the pendency of the trial Accused No.14 – Mohamadrafiq Ganibhai Shayer Chipa and Accused No.24 – Abdullatif Abdulwahab Sheikh died, therefore, case against them has been abated. So far as remaining accused are concerned, since the prosecution failed to establish the charges leveled against them, they have been acquitted of the offences with which they were charged.

4. Aggrieved by the judgment and order of conviction and sentence dated 19.8.1999, the Accused has filed the instant Criminal Appeal with the aid of Section 374 of the Criminal Procedure Code ("the Code" for short).

5. The prosecution case, as disclosed from the FIR and unfolded during trial, is as under:

5.1 On 4.9.1993 at 1:15 am, H.P.Kohri, PSI, Gaekwad Haveli Police Station received message that a dead body was lying near Sahakari Cold Storage, just opposite Munda Gate and Telephone Exchange. Near the dead body, there was a stationery Truck bearing registration No. GJ 1U 7377. The dead body was of a male person aged about 35 years, which was bleeding. A fire-arm injury could be seen on the forehead above left eye. On being seen minutely, there was bullet injury found on the neck of the dead body. He, therefore, lodged FIR, which was registered as

I.C.R. No. 161/93.

5.2 Pursuant to the registration of FIR, investigation was carried out. During the course of investigation, it was revealed that it was the dead body of one Bhagvandas Dwarkadas Sindhi who used to deal with illicit foreign liquor. It has also been alleged that Accused No.24 – Abdullatif Abdulwahab Sheikh (since deceased) was also dealing in identical business and the said Bhagwandas Dwarkadas Sindhi was not prepared to buy liquor from him. There was financial loss caused to Abdullatif Abdulwahab Shaikh as he was not getting amount of commission. Therefore, a conspiracy was hatched by the said Abdullatif Abdulwahad Sheikh, Accused no. 1 Abdulwahab, Accused No. 25 – Abdulsattar and the absconding accused Rasulkhan @ Rasulparti, to abduct Bhagwandas Dwarkadas Sindhi and to extort money from him. If he failed to do so, then he should be done to death. It is also alleged that Accused no.4 – Shakilahmed and Accused No.17 – Aslam were also dealing in liquor business near Madhuram Theatre and the said Bhagvandas Dwarkadas Sindhi used to visit them in this regard. Information in this regard was supplied by said Accused No.17 – Aslam and relying on the same, Accused No.2 – Iqbalhussain and Accused No.3 – Mohamadsalim were posted at Madhuram Cinema for having watch. When said Bhagwandas came there, Accused No.4 – Shakilahmed and Accused No. 20 – Aslam informed Accused No.1 – Abdulwahab and also to deceased

Accused-Sherzada on telephone and therefore, Accused No.7 – Abdulkadar and Accused No.8 – Abdulsattar provided the Accused and deceased Sherzada a Maruti Van bearing No. GH 1R 668 having fictitious number plate. When said Bhagwandas Dwarkadas Sindhi, with his friend Kamli @ Kamlesh appeared there, they were stopped. At the relevant time, Accused No.2 Iqbalhussain and Accused No.3 Mohamadsalim informed the Accused and deceased Sherzada who were occupying Marutivan. The Accused, Accused No.2 – Iqbal and Accused No.3 Mohamadsalim and deceased Sherzada, having revolvers, abducted said Bhagwandas in Maruti Van and attempted to extort money from him. As he resisted, the Accused fired shot from his revolver and he was done to death. Thereafter, in order to screen the evidence, his dead body was thrown near cold storage. It is also alleged by the prosecution that in order to establish supremacy in the business of illicit liquor, Accused No. 26 – Jahangir Patel brought arms by using false documents and bogus license and such arms and cartridges were sold to Accused No.24 – Abdullatif. The arms used to be kept with Accused No.24 Abdullatif, Accused No.25 – Abdulsattar and absconding Accused Rasulkhan @ Rasulparti. The arms were used to commit murder and were given at the instance of Abdullatif. It is also alleged that the Accused No.9 – Mohamad Rafiq was very much aware that the Accused, Accused No.5 – Abdulsattar and Accused No.6 – Mohamadsalim were involved in criminal

activities. In order to avoid their arrest, with the company of Accused No.10 – Mohamadhanif and Accused No.11 – Azaz, they were harboured at Mumbai. It is also alleged that Accused No.12 Yusuf and Accused No.14 Mohammadsharif and Accused No.15 – Firozbhai were also aware that the Accused used to communicate message through their public telephone. It is also alleged that Accused No.16 – Salim Noormohamad and Accused No.18 – Ahmediliyas had provided shelter to the Accused No.1. They were also aided and abetted by Accused No. 19 – Yasin Ganibhai and Accused No.20 – Salauddin Ganibhai and Accused No.21 – Nazirmohamad. After committing serious offence, to facilitate the escape of the Accused from the country, the Accused No.13 – Mohamadiqbal, Accused No. 22 -Ramchandra and Accused No. 23 – Prakash forged the documents and submitted application to passport office. The sum and substance of prosecution case is that after hatching criminal conspiracy, they have committed various offences.

5.3 During the course of further investigation, necessary panchnama of the inquest report was made. Dead body of deceased Bhagwandas Dwarkadas Sindhi was sent for autopsy, necessary panchnama in respect of the seized articles were drawn and articles were sent to F.S.L. Thereafter further investigation was undertaken by crime branch. Certain accused were arrested. Since incriminating evidence was found against the accused, first charge sheet

was filed against 23 accused and thereafter supplementary charge sheet was submitted against remaining accused nos. 24, 25 and 26 before the designated Judge, Ahmedabad. Initially in the present case, provisions of TADA Act were applied. However, the designated Judge, Ahmedabad held that, considering the facts of the case, TADA Act cannot be made applicable, therefore, both the TADA cases were treated as Sessions Case No. 13/1997 and Sessions Case No. 14/1997 respectively.

5.4 As the Sessions Case Nos. 13 of 1997 and 14 of 1997 arise out of same CR, i.e. I.C.R.No.161/1993, both the cases were consolidated and decided by the common judgment.

5.5 The learned trial Judge to whom the case was made over for trial, framed charges against the accused for the offences punishable under Sections 302 read with Section 34, 120B of the IPC as well as for other offences.

5.6 The charges were read over and explained to the accused. The accused pleaded not guilty to the charge and claimed to be tried, and therefore, the trial Court put them on trial.

5.7 To prove the culpability of the accused, the prosecution has examined as many as 18 witnesses and relied upon their oral testimonies, the details of which have been given in paragraph 22 of the impugned judgment

and order. They are as under:

PW No.	Name & Status	Exhibit	Page No.
1	Hardhwar Patiraj Kohri, PSI, Complainant.	64	549
2	Mohabbatsingh Pruthvisingh, P.C.	76	563
3	Punjabhai Kanabhai, P.S.O.	78	567
4	Kamlesh Dayaram alias Kamli	90	593
5	Bhawanbhai Maganbhai Parmar, Panch	92	805
6	Noorbhai Nannebhai Shaikh, Panch	93	813
7	Chandmiya Gulam Hussain Shaikh	95	819
8	Imran Yusufbhai	100	831
9	Dr. Dilip Manubhai Desai, P.M.Doctor	101	839
10	Makanaji Jivaji, First Grade Constable	107	851

PW No.	Name & Status	Exhibit	Page No.
11	Prasad Vishnu Pathak, Branch Manager of Development Co-operative Bank Ltd,. Mumbai	127	873
12	Raghunath Pandurang Pavar, P.S.I. Worli Police Station, Mumbai	132	893
13	Jitendra Rambhai Patel	213	967
14	U.T.Brahmbhatt, P.I. Crime Branch (I.O.)	215	983
15	Mohanbhai Jivabhai Rathod, Ballistic Expert	271	1077
16	Baburao Ramsinh Patil (I.O. - A.C.P. Crime Branch)	273	1089
17	Gunvantray Devram Trivedi, P.S.I, Crime Branch (I.O.)	286	1105
18	Rajendrasinh Hathisinh Rathod, P.I., Gayakwad Haveli Police Station.	287	1115

5.8 To prove the charges leveled against the accused, the prosecution has also produced number of documents and relied upon the contents of the same. The details of which have been given in paragraph 23 of the impugned judgment and order. They are as under:

Srl. No.	**Particulars**	**Exhibit**	**Page No.**
1.	Inquest Panchnama dated 4.9.1993 from 04:45 to 05:15 hrs.	55 (Mark 53/1)	405
2.	Panchnama of place of offence dated 4.9.1993 from 05:30 to 06:30 hrs.	56 (Mark 53/2)	409
3.	Panchnama of clothes of deceased, cartridge and blood samples produced by P.C. Dated 4.9.1993 from 19:30 to 20: hrs.	79 (Mark 53/3)	417
4.	Panchnama of production of Scooter No. GJ 1 DD 2446	57 (Mark 53/5)	429
5.	Sanction accorded by D.C.P., Ahmedabad City dated 3.12.1995	274 (Mark 53/18)	511
6.	F.I.R. Given by P.S.I. H.P.Kohri dated 4.9.1993.	58 (Mark 54/1)	519

Srl. No.	Particulars	Exhibit	Page No.
7.	Report of registration of offence dated 4.9.1993 at 02:25 hrs.	59 (Mark 53/2)	523
8.	P.M.Report	60 (Mark 54/3)	525
9.	Yadi / Report for carrying out P.M.	61 (Mark 54/4)	539
10.	Yadi by P.I. To M.O. Of V.S.Hospital for opining cause of death.	62 (Mark 54/5)	543
11.	Visit by F.S.L. Van to the place of offence	63 (Mark 54/6)	545
12.	Repost of F.S.L. of Ballistic Expert – I.C.R. No. 161/93	277 (Mark 91/9)	655
13.	Report of F.S.L. in respect to clothes, earth, etc. dated 26.10.1993 – I.C.R. No.161/93.	289 (Mark 91/10)	661
14.	Report of F.S.L.	290 (Mark 90/11)	663

Srl. No.	Particulars	Exhibit	Page No.
15.	Report of F.S.L.	291 (Mark 90/12)	665
16.	F.S.L. report – Serology dated 25.10.1993	292 (Mark 91/13)	673
17.	Report of F.S.L. in respect to Maruti Car GJ 1R 668	293 (Mark 91/15)	679
18.	Forwarding note by P.I. To F.S.L.	288 (Mark 91/171)	685
19.	Letter to A.C.P. Addressed to F.S.L. in respect to I.C.R. No. 60/94.	282 (Mark 91/19)	717
20.	Estimate of spare parts of the car signed by witness.	94 (Mark 91/32)	803
21.	Ration card of witness Chandmiya Gulamhussain.	97 (Mark 96/1)	825
22.	Account opening form of accused no.9 given by the Bank.	129 (Mark 128/1)	881

Srl. No.	Particulars	Exhibit	Page No.
23.	Statement of account given by the Bank.	130 (Mark 128/2)	885
24.	Seizure panchnama prepared by Mumbai Police in respect to accused no.23 – Prakash Shobnath Gupta.	152 (Mark 151/1)	919
25.	Discovery panchnama of weapons by the Accused from his residence in ICR No. 60/94 dated 3.6.94 from 1:00 to 7:00 hrs with signatures of IO.	262 (Mark 214/1)	1049
26.	Reminder dated 15.11.1994 to F.S.L. by PW No.16.	276 (Mark 275/1)	1099
27.	Panchnama of place of offence dated 4.9.1993.	56	409
28.	Slips signed by panchas in respect to discovery panchnama – ICR No. 60/94.	221	1025

5.9 After recording of the evidence of the

prosecution witness was over, the trial Court explained to the Accused, Accused No.9 – Mohamadrafiq and Accused No. 23 – Prakash Shobhath Gupta, circumstances appearing against them and recorded their further statement under Section 313 of the Code, whereas there is no evidence worth consideration against the Accused Nos. 2 to 13 and 15 to 23 of Sessions Case No. 13 of 1997 and Accused Nos. 25 and 26 of Sessions Case No. 14 of 1997. Therefore, the trial Court has not recorded their further statement under Section 313 of the Code.

5.10 In his further statement, the Accused has denied the case of the prosecution and stated that during the period, he was under police remand, he was not brought out of the camp. The house of Nandanvan society is not owned by him. Nothing has been seized from his possession or in his presence. He has also produced the certified copy of the affidavit filed by Deputy Superintendent of Police P.P.Ansari before the Honourable Apex Court during the proceeding of Special Leave Petition (Criminal) No. 2584 of 1995. He has also produced certain documents pertaining to 67, Nandan Cooperative Society in order to show that neither he is having the possession nor he is the owner of the said house. These documents indicate that said house is in possession of one Bharat Vanchand Shah. It is the say that false case has been made out against him by police. However, he has neither led any evidence nor

examined any witness in support of his defence. So far as further statements of Accused Nos. 9 and 23 are concerned, it is not necessary for us to refer to the same, since they have been acquitted.

5.11 On appreciation, evaluation and scrutiny of the evidence on record, the trial court held that since there is no evidence worth consideration to connect 23 of the accused, i.e. Accused Nos. 2 to 13 and 15 to 23 of Sessions Case No. 13 of 1997 and Accused Nos. 25 and 26 of Sessions Case No. 14 of 1997, and acquitted them from all the charges, whereas so far as the Accused is concerned, prosecution has successfully proved beyond doubt the guilt of the Accused that he has committed murder of Bhagwandas Dwarkadas Sindhi and thereby committed offence punishable under Section 302 of IPC and sentenced him to suffer RI for life and fine of Rs.10,000/- in default of payment of fine, SI for 3 months. However he has been acquitted of the offence for the remaining charges, which has given rise to the instant Appeal at the instance of original Accused No.1.

6. Mr. J.M.Panchal, learned advocate of the Accused, in support of the Appeal, has raised the following contentions:

(i) The prosecution failed to establish the motive of the crime.

(ii) The prosecution failed to prove the enmity

between the Accused and the deceased Bhagwandas Dwarkadas Sindhi.

(iii) There is no direct evidence in the case as most of the witnesses have not supported the case of the prosecution, with the result that the prosecution has to rely on circumstances to prove its case.

(iv) Even the circumstances relied on by the prosecution are not sufficient enough to establish the guilt beyond reasonable doubt.

(v) This is also a case of no evidence and prosecution in turn, has not established each and every circumstances in chain against the Accused.

(vi) The case mainly hinges upon the so called circumstances of discovery of weapon at the instance of the Accused, which creates a reasonable doubt – as the same was drawn in connection with some other offence and weapons were discovered in connection with some other offence; as the panch witnesses have not supported the case of prosecution, as the I.O. in the present case filed the affidavit before the Honourable Supreme Court stating that the weapons by which the crime was committed were discovered at the instance of Accused No.9; as the ownership of the house from where weapons were allegedly discovered is seriously disputed by the Accused and no other evidence is produced by the prosecution to connect the Accused with

the house; as the discovery panchnama which was drawn by the police does not bear the signature of I.O. showing concoction of documents and also table work of investigating agency.

(vii) That the evidence in the nature of discovery panchnama suffers from serious defects which are fatal to the prosecution and the same panchnama is made the sole basis of conviction. Evidence in respect of weapons – seizure of weapons as well as F.S.L. report in respect of the same materially differs giving rise to a doubt regarding identity of weapons with which the crime is alleged to have been perpetrated.

(viii) That the prosecution has not been able to establish the link between the Accused and the offence in the sense that there is no evidence to show that the weapon was used by the Accused in commission of the offence in question nor are there circumstances which would lead to a legitimate inference that the Accused must have used the weapon for commission of the offence.

7. To buttress the aforesaid submissions, he also highlighted the following discrepancies in the prosecution evidence:

(i) There is no link to suggest that bullet mark 'I' was available with F.S.L. when it has compared with the revolver mark 'A' (of C.R.No. 60 of 1994).

(ii) Discovery panchnama exh. 262 is not in

accordance with Section 27 of Evidence Act.

(iii) The prosecution is not clear as regards place from where weapons were seized.

(iv) Expert cannot be said an expert in absence of special knowledge and skill who is not prepared to accept observation of celebrated author.

(v) When discovery of weapon is base of prosecution, close and minute scrutiny is required in respect to testimony of P.I. who is otherwise interested.

(vi) Delay in sending Muddamal articles to F.S.L. and there is no explanation from the prosecution, no evidence as to safe custody of such weapons.

8. On the aforesaid premises according to him there is no eye witness to the incident and the circumstances upon which the prosecution placed reliance, absolutely does not provide any link of the chain, and therefore, the impugned judgment and order, convicting the Accused for commission of the offence punishable under Section 302 IPC and sentencing him to imprisonment for life, deserves to be quashed and set aside by allowing this Appeal and thereby acquitting the Accused of the offences with which he was charged. He, therefore, urged to allow this Appeal.

9. Per contra Mr. A.J.Desai, learned APP for the

Respondent – State of Gujarat has supported the impugned judgment and order of conviction and sentence. According to him, no interference is called for in the impugned judgment and order of conviction and sentence as the impugned judgment and order passed by the trial Court is just and proper, and on the basis of the evidence on record. He further contended that no case is made out to take a view contrary to the view taken by the trial Court. According to him, it is true that, in this case, there is no eye witness to the incident of murder of Bhagwandas Dwarkadas Sindhi. So called PW-4 – Kamlesh Dayaram alias Kamli, alleged partner of deceased, in liquor business, has turned hostile and panch witness of the panchnama of the discovery of the weapon from the Accused has also turned hostile. However that fact itself does not absolve the accused from the charges leveled against him, as there is a consistent evidence of the ballistic expert; of the discovery panchnama of the weapons recovered from the Accused; and also evidence to the effect that the bullet article 'I', which was recovered from the dead body of the deceased was fired from the revolver recovered from the Accused. Therefore, according to him this is a case of circumstantial evidence. Therefore, according to him, it is proved that the Accused has committed offence of murder of Bhagwandas Dwarkadas Sindhi punishable under Section 302 IPC, and the trial Court has rightly convicted and sentenced the Accused for commission of the

said offence. He has also pointed out all the details about the Number of the revolvers recovered from Accused No.1. According to him, oral evidence of the IO and the evidence of ballistic expert as well as the contents of the panchnama corroborate each other, therefore, there is no room for doubt about the evidence of the prosecution witness. On the aforesaid premises it is submitted that the appeal lacks merit and deserves to be dismissed. He, therefore, urged to dismiss the Appeal.

10. We have considered the submissions advanced by Mr. J.M.Panchal, learned advocate of the Appellant and Mr. A.J.Desai, learned APP for the Respondent - State of Gujarat. We have perused the impugned judgment and order, and the set of evidence supplied by him during the course of his submission. We have also undertaken a complete and comprehensive appreciation of all vital features of the case and the entire evidence on record, which is read and re-read by the learned advocates of the parties with reference to broad and reasonable probabilities of the case.

11. At the outset be it stated that so far as the homicidal death of deceased Bhagwandas Dwarkadas Sindhi is concerned, no dispute is raised by the learned advocate of the Accused before this Court. He has admitted that the deceased has died homicidal death. However, we have perused the evidence of PW-9 – Dr. Dilipbhai Manubhai

Desai (exh. 101), who has performed autopsy on the dead body of the deceased and has issued port mortem report at exh. 60. On conjoint reading of oral evidence of Dr. Dilip Manubhai Desai and P.M. Report, there is no manner of doubt that the deceased Bhagwandas Dwarkadas Sindhi has died homicidal death. The trial Court has therefore, rightly recorded the finding that the deceased died homicidal death and we affirm the said finding.

12. At this stage, it may also be required to be noted that so far as Accused No. 14 and 24 are concerned, they died during the pendency of the trial, therefore, the case against them stood abated. The trial Court has acquitted Accused Nos. 2 to 13 and 15 to 23 of Sessions Case No. 13 of 1997 and Accused Nos. 25 and 26 of Sessions Case No. 14 of 1997, and the State has not preferred any Appeal against the acquittal. Therefore, we need not examine the evidence in connection with those accused.

13. The only question which is required to be examined by us is as to whether the Accused has committed offence of murder of Bhagwandas Dwarkadas Sindhi, punishable under Section 302 IPC. In this connection, it is pertinent to note that there is no eye witness to the incident of killing the deceased Bhagwandas Dwarkadas Sindhi. However, the fact remains that he died because of the alleged fire arm injury sustained by him from the revolver of the Accused.

Therefore, the prosecution case entirely rests on the circumstantial evidence.

14. It is settled principle of law that in order to sustain conviction on the basis of circumstantial evidence, prosecution must fulfill three conditions:

(i) the circumstances from which an inference of guilt is sought to be drawn must be cogently and firmly established;

(ii) those circumstances should be of a definite tendency unerringly pointing towards the guilt of the accused;

(iii) the circumstances, taken cumulatively, should form a chain so complete that there is no escape from the conclusion that within all human probability the crime was committed by the Accused and none else, and it should also be incapable of explanation of any other hypothesis than that of the guilt of the Accused. Further, in cases depending largely upon circumstantial evidence there is always a danger that the conjecture or suspicion may take the place of legal proof and such suspicion however so strong cannot be allowed to take the place of proof. The court has to be watchful and ensure that conjectures and suspicions do not take the place of legal proof. The Court must satisfy itself that the various circumstances in the chain of evidence should be established clearly and that the completed chain must be such as to rule out

a reasonable likelihood of the innocence of the Accused.

The above principles are laid down by the Supreme Court in the case of Jaharlal Das v. State of Orissa, AIR 1991 SC 1388.

15. It is also one of the settled principles of law that witnesses may tell lies but not circumstances. The Court must adopt cautious approach for basing conviction on circumstantial evidence. The Supreme Court has reiterated it in the case of State of Haryana v. Ved Prakash, AIR 1994 SC 468.

16. The Supreme Court in the case of Ramkumar Madhusudan Pathak v. State of Gujarat, (1998) 7 SCC 702 has aptly and elaborately laid down the principles as to which are the circumstances establishing guilt of the Accused.

17. The Supreme Court in the very well known case of Sharad Birdhichand Sarda v. State of Maharashtra, AIR 1984 SC 1622, has laid down following five principles to base conviction on the circumstantial evidence:

(i) the circumstances from which the conclusion of guilt is to be drawn should be fully established. The circumstances concerned 'must or should' and not 'may be' established;

(ii) the facts so established should be consistent only with the hypothesis of the guilt of the Accused, that is to say, they should not

be explainable on any other hypothesis except that the Accused is guilty;

(iii) the circumstances should be of a conclusive nature and tendency;

(iv) they should exclude every possible hypothesis except the one to be proved, and

(v) there must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the Accused and must show that in all human probability the act must have been done by the Accused.

18. In the latest decision of the Supreme Court in the case of Jaipal v. State of Haryana, (2003) 1 SCC 169, the Supreme Court has held that merely because the Accused could have had a motive for causing death of the deceased it would not by itself be enough to sustain the finding of guilt against him.

19. Keeping in forefront the aforesaid principles clearly elucidated by the supreme Court, we may now advert to the evidence adduced by the prosecution to find out whether the prosecution has successfully established the chain of evidence to base conviction on circumstantial evidence adduced by it.

20. To prove the case against the Accused on the basis of the circumstantial evidence, the prosecution has pitted the following four circumstances against the Accused:

(i) Bullet taken out from the dead body of Bhagwandas Sindhi and forwarded to F.S.L. for having scientific examination (that was marked as bullet 'I').

(ii) According to Dr. Dilip Desai who conducted autopsy, Bhagwandas died on account of injury sustained by bullet.

(iii) During the course of investigation in another C.R. Number, i.e. 60/94 of Gaekwad Haveli Police Station, at the behest of the Accused, revolvers and cartridges etc. were seized under panchnama.

(iv) The ballistic expert has given definite opinion that bullet mark 'I' which was taken out from the dead body of deceased Bhagwandas was fired from the revolver mark -A seized under panchnama as stated in above 'C'.

21. To establish the aforementioned circumstances the prosecution has mainly relied upon the evidence of Panch witness, Police Officers including Investigating Officer, Ballistic Expert, Discovery Panchnama and Report of Ballistic Expert, etc.

22. First of all, let us examine as to how this incident is reported to the police station. In this connection, we first advert to the evidence of PW-1 Hardhwar Patiraj Kohili, PSI at exh. 64. According to him, on 3.9.1993, while he was on his duty as P.S.I. with Gaekwad Haveli Police Station, he received a telephonic message at

1:15 am on 4.3.1999 from telephone duty Constable Mohabatsinh Pruthvisinh of Jamalpur Chowki conveying that the dead body of a man was lying near Munda Gate, near Government Cold Storage. He immediately informed P.I. R.S.Rathod in this regard. He went to the scene of occurrence in mobile where he saw the dead body and Truck No. GJ 1 U 7077. The deceased had sustained injury due to firing above the left eye and he was bleeding from nose and mouth. He also saw injury of firearm on his neck. He had put on full sleeved shirt and Ash coloured pant. He gave FIR in this regard and it was registered as I.C.R. No. 161/93 with Gaekwad Haveli Police Station. Thereafter, further investigation was undertaken by P.I. Rathod.

23. The prosecution, to prove discovery panchnama of the weapons recovered from the Accused at his will, has relied on the evidence of PW -13 Jitendra Rambhai Patel at exh. 213. According to the prosecution, arms (i.e. Revolvers and Pistol) were seized at the behest of the Accused during the investigation of another case, i.e. I.C.R. No. 60/94 of Gaekwad Haveli Police Station. It may be noted that this witness has not supported the prosecution version. He has testified before the Court that his signatures were obtained on blank papers. Another panch Kaushikbhai was also with him. He had also put his signature in identical manner. He has deposed that the police did not take him anywhere in Shahpur area. He has not gone out of

Gaekwad Haveli Police Station. He has admitted his signature in the panchnama which is produced vide exh. 262 and 263. It may be noted that the panchnama is produced in Sessions Case arising out of I.R.No. 60/94. Therefore, in the instant case xerox copy of the panchnama, which was forming part of the chargesheet, was produced, which is on record at exh. 262. Defence has also produced the xerox copies of the said panchnama, which, according to them do not bear signature of the officer nor it is certified, which is also produced on record at exh. 263. A detailed discussion of the discrepancy of the two exhibits, will be discussed hereinafter, while re-appreciating the evidence of the police officers. However, the fact remains that the panch does not support the prosecution version about the discovery made in his presence.

24. The prosecution, thereafter, has examined and relied upon the oral testimony of PW-14 Udaykumar Tribhuvandas Brahmbhatt, PI Crime Branch (I.O.) at exh. 215 who conducted investigation in the present case and also I.C.R. No. 60/94 of Gaekwad Haveli Police Station. He has inter alia testified that on 15.6.1994, while he was serving with crime branch, he took over investigation from P.I. Rathod. According to him, he arrested certain accused and obtained their police remand, and recorded statements of witnesses. He has further deposed that on 3.6.1994 the Accused was in his custody in connection with I.C.R.No. 60/94 of

Gaekwad Haveli Police Station. While he was in such police custody, he expressed his willingness to show arms and cartridges which were used by him during various offences. Therefore, two panchas were called and preliminary panchnama was prepared in police station. Thereafter two panchas, police staff and the Accused left the police station for Shahpur, Nandan Society. The vehicle was driven under the instructions of the Accused and at his instance it was stopped at Shahpur, Nandan Society. The Accused got down and they followed him. After reaching near house, he told that it was his house. He knocked the door. It was opened by his aged father Abdulmajid Baloch. They were taken upstairs by the Accused. Just opposite to stair case, he brought out an ash coloured suitcase, which was kept in a bed sheet. The suitcase was opened by the Accused. A foreign made revolver and pistol, and a country made revolver along with 160 cartridges were recovered. Equipments for cleaning weapons, and a cleaning rod was also recovered. All these articles were packed in a box and slips containing signatures of panchas were affixed and it was also sealed with wax. The remaining portion of panchnama was completed there. It was also duly signed by himself and 2 panchas. The witness has identified the Accused in the court room. The witness has corrected himself that as such there were 3 foreign made revolvers and 2 country made revolvers along with 113 cartridges, which were recovered from the suit

case. He has also added that empty magazines of AK 47 were also found from the suit case. He has identified the following muddamal in the Court room:

Art. No.1	Mark / Brand	Number inscribed
33.	Revolver Smith & Wesson, Made in USA .38	630894
34.	Revolver Smit & Wesson Made in USA .38	882184
		781858
35.	Revolver – Court Official Police	387200
36.	Pistol, Foreign made .45	
37.	Revolver Made in Japan	22226
38.	Revolver, Country made	

25. He has further testified that the articles seized during the investigation of Gaekwad Haveli Police Station I.C.R. No. 60/94 were forwarded to F.S.L. for scientific examination by S.P. B.R.Patil. On 8.9.94 the investigation of present case was handed over to S.P. B.R.Patil under the instructions of senior officer of crime branch. The witness has been cross-examined extensively by the learned advocate of the Accused. Lot many suggestions about the false case filed against the Accused were put to him. However, he has successfully repelled all the suggestions. He has also denied that on blank papers, signatures of the panchas were obtained and thereafter panchnama was

prepared according to his own convenience. He also repelled the suggestion that the muddamal articles were not recovered from the accused at his instance by drawing discovery panchnama. According to us, this witness has withstood the test of cross-examination and nothing substantial has been brought out from his evidence which would impeach his credibility.

26. The prosecution, thereafter, examined and relied upon the oral testimony of PW-18 Rajendranh Hathisinh Rathod, PI, Gaekwad Haveli Police Station at exh. 284 who has initiated the investigation as Senior Police Inspector. FIR exh. 58 given by PSI Kohari was recorded by him. He also drew panchnama of scene of occurrence exh. 56. He also took photographs of scene of occurrence. He also recorded the statements of witness Kamlesh @ Kamli Dayaram on 5.9.93, 6.9.93 and 7.9.93. He has further testified that the cartridges recovered from the dead body and bullets, clothes, etc. recovered from the scene of occurrence were forwarded to F.S.L. for having scientific examination vide forwarding letter exh. 288. In this regard, report of examination given by FSL are at exh. 277, 289, 290, 291, 292 and 293.

27. The prosecution thereafter has examined and relied upon oral testimony of PW-16 Baburao Ramsinh Patil. He was serving as A.C.P. with Crime Branch, Ahmedabad. He took over the investigation of present case from

U.T.Brahmbhatt. He obtained necessary sanction / consent under the Arms Act, from D.C.P. Crime Branch vide sanction order exh., 274. He has also investigated another offence, i.e. I.C.R. No. 60/94 of Gaekwad Haveli Police Station. The arms were seized during the investigation of I.C.R. No. 60/94, in order to obtain opinion of F.S.L. as to whether the injury caused to deceased Bhagwandas Dwarkadas Sindhi in the present case could be done by the arms seized and recovered in I.C.R. No. 60/94 of Gaekwad Haveli Police Station, he wrote a letter to F.S.L. He also sent reminders vide exh. 276.

28. According to the prosecution, the bullet which was taken out from the dead body of the deceased Bhagwandas Dwarkadas Sindhi was fired from the revolver recovered from the Accused. The revolvers and cartridges were seized from the house of the Accused by drawing a discovery panchnama at his instance.

29. To prove the chain of aforesaid circumstances, the prosecution, thereafter, examined and relied upon the oral testimony of PW-15 Mohanbhai Jivabhai Rathod. He has inter alia testified that he was working as Scientific Officer in Ballistic Division of F.S.L. for the last 10 years and he had opined in the said capacity in as many as 600 cases. On 4.9.93, they received muddamal bullets and clothes of I.C.R.No. 161/93 of Gaekwad Haveli Police Station. The muddamal received by them in respect to Gaekwad Haveli

Police Station I.C.R.No. 60/94 were 3 revolvers of 0.38. On 9.9.93, clothes and bullets were received by him. He examined the same. Mark G-1 was bush-shirts and after examining the same, he opined that holes found on the bush-shirts were due to fire arms. The bullet extracted from the dead body of the deceased was mark 'I'. He has further testified that the muddamal sent in connection with the I.C.R. No. 60/94 of Gaekwad Haveli Police Station was received by him after 29.7.1994. The said muddamal was assigned File No. 94/BL/277 with their office. There were 3 revolvers of .38 in the said muddamal. Those were assigned Mark 'A', 'B' and 'C' respectively. He has further testified that Mark 'A' and 'B' revolvers were make of Smith & Wesson Co., USA while mark 'C' was of Colt, USA make. On being examined 3 revolvers, following observations were made by him:

Revolver Mark 'A'	It was used, Test firing was made in laboratory to see it's working condition. It was having right hand twist, 5 lands and 5 grooves.
Revolver Mark 'B'	During test firing, it was found in working condition and having right hand twist 5 lands and 5 grooves.
Revolver Mark 'C'	It was found in working condition during test firing having right hand twist 6 lands and 6 grooves.

30. Microscopic comparison was carried out in respect to bullet mark 'I' with bullets fired from revolvers A, B, and C. Thereafter, he concluded that the bullet 'I' was fired from revolver 'A'. In order to arrive at such finding, he matched the land to land and rifling marks. He also compared the width of number of grooves, number of lands and rifling marks. From rifling marks, he said that bullet 'I' could not be fired from other than revolver mark 'A'. He gave his opinion in this regard in the second part of his F.S.L. report at exh. 281. According to him, the aforesaid three revolvers were received along with forwarding letter (exh. 282) in respect to I.C.R. No. 60/94 of Gaekwad Haveli Police Station.

31. It may be noted that this witness was also cross-examined at great length and in great detail. He repelled all the suggestions put to him, with regard to that, he has not correctly opined in his examination in chief as well as report, which is on record at exh. 281. A conjoint reading of oral testimony of PW-15 Mohanbhai Jivabhai Rathod (exh. 281), FSL report (exh. 282) and letter sent by investigating officer authorising inspection by FSL of muddamal of I.C.R. No. 161/94, there is no manner of doubt and no difficulty in coming to the conclusion that the bullet which was recovered from the dead body of the deceased was fired from revolver mark 'A' which was recovered from the Accused while drawing discovery

panchnama.

32. Mr. Panchal, learned advocate of the Accused made a feeble attempt that as per the panchnama (exh. 262), the revolver which was mentioned at item no.1 was made in USA - Smith and Wesson of .38 bore and the number of the revolver on handle grip is mentioned 630894 whereas the opinion dated 18.4.1996, which was given by the F.S.L. wherein the number of mark 'A' revolver is 768029. Therefore, according to him there is a reason to believe that the bullet was not fired from the revolver of the Accused as there is a discrepancy in the numbers mentioned in the panchnama as well as F.S.L. report dated 18.4.1996. According to us, the aforesaid submission is absolutely meritless in view of the consistent oral testimony of PW-15 – Mohanbhai Jivabhai Rathod, who has mentioned about FSL report dated 5.10.1994 (exh. 281) and the forwarding letter sent by the I.O. to FSL (exh. 282), and not the FSL report dated 18.4.1996, and as per the FSL report dated 5.10.1994, it is clearly mentioned therein that the bullet Mark 'I', which was recovered from the dead body of the deceased was fired from revolver Mark 'A'. Besides this, the chargesheet in connection with 23 accused of Sessions Case No. 13 of 1997 was filed on 13.1.1995 and thereafter supplementary charge sheet was submitted against accused Nos. 24, 25 and 26 whereas reliance is place by Mr. Panchal, learned advocate of the accused on the FSL

report dated 18.4.1996 which has no significance with this case because as per the settled procedure and practice, at the time of charge sheet all relevant papers are annexed therewith. Besides this letter dated 18.4.1996 is not an exhibited document. Though the prosecution is unable to explain under what circumstances FSL report dated 18.4.1996 was submitted, which has no bearing with the present case, therefore it has to be discarded.

33. Mr. J.M.Panchal, learned advocate of the Accused vehemently submitted while referring to the evidence of PW-13 Jitendra Rambhai Patel that the panch witness of the panchnama (exh. 262) has not supported the panchnama and have resiled from their statement made in the panchnama and therefore, no reliance can be placed on panchnama (exh.262 and 263). Besides this, the panchnama (exh. 262) has been produced by the prosecution witness whereas exh. 263 was supplied to the Accused along with the charge sheet which does not bear the signature of the investigating officer. Therefore, also doubt is created on the prosecution case with regard to the discovery panchnama, i.e. about the fabrication of the panchnama by the I.O. The aforesaid submission of Mr. Panchal has also absolutely no force and merit. It may be noted that panchnama (exh. 262 and exh. 263) is not the original. Original one is produced in the Sessions Case arising out of I.C.R. 60/94 whereas in this case xerox copy of the said

panchnama has been produced by the prosecution along with the charge sheet. Therefore, both the panchnamas are tallying with respect to each and every page and line. In the panchnama-exh. 263, signature of the I.O. has disappeared. Possibility cannot be ruled out that now a days, with a modern technique and device the Accused might have tried to remove the signature of the I.O. which was found in xerox copy by doing some tactics or by using some chemicals.

34. The plea that panch witnesses have turned hostile and, therefore, the evidence adduced by the investigating officer regarding seizure of incriminating articles at the instance of the Accused should be disbelieved, is merely stated to be rejected. It is well settled that merely because the panch witnesses do not support the case of the prosecution, the case of the prosecution need not be thrown over-board as unreliable. It must be realised that the phenomenon of panch witnesses turning hostile to the prosecution is not unknown and is ever on the increase. It needs hardly to be emphasized that the decision of a case does not depend solely on the question whether the panch witnesses support the prosecution or turn their back on it. If the decision of the case were to depend solely on the testimony of panch witnesses regardless of the evidence of police officers, in theory, it would be giving a right of veto to the panchas so far as that question of culpability of the Accused is concerned,

which is not permissible in criminal jurisprudence. It is well settled that without good ground being pointed out, testimony of police officer, if otherwise found to be true and dependable, cannot be discarded by Court on the ground that he is a police officer. On the facts and in the circumstances of the case, this Court finds that testimony of PW-14 U.T.Brahmbhatt, IO is not only inspiring confidence, but, gets corroboration from the other evidence on record. From his evidence, contents of panchnama (exh. 262) have been duly proved and therefore, reliance can be placed on the said piece of evidence and as per the said piece of evidence the Accused has shown willingness to find out the muddamal weapon which he had hidden in the house of his father.

35. Mr. Panchal has made a criticism that the house from where the muddamal was discovered by drawing discovery panchnama, did not belong to the Accused and the I.O. has not tried to collect the evidence as to who was the owner of the said house. On the contrary, as per the defence, the owner of the said house was other than the Accused or his father. Therefore also, the discovery panchnama made at the instance of the Accused, cannot be believed and relied upon. The aforesaid submission has also no substance and force. It may be noted that there is an evidence that the said house was shown by the Accused and at his instance, the Accused has taken the I.O. to the said house, which was

opened by his father, who was all alone in the said house. It may also be noted that the Accused and his father were in exclusive and conscious possession of the said house. It may be possible that the said house may not be of the ownership of the Accused and may be of the ownership of someone else, but that does not be a decisive factor with regard to the fact that the said house was not in conscious and exclusive possession of the Accused. In this connection, it would be appropriate to refer to the latest judgment of the Supreme Court in the case of State of Maharashtra v. Siraj Ahmed Nisar Ahmed and others, (2007) 5 SCC 161. A similar question arose before the Supreme Court with regard to the recovery of revolver and five cartridges from flat of the Accused on the basis of disclosure statement of co-accused. The prosecution did not produce the evidence to prove the title or ownership of the Accused in relation to the said flat. In that situation, the Supreme Court has held that it was not fatal where prosecution established conscious and exclusive possession of said flat by the Accused and thus excluded the possibility of other persons concealing and keeping firearms in the premises of the flat, and therefore, seizure of the above articles, held, was proved by the prosecution.

36. Applying the principle laid down by the Supreme Court in above referred to latest decision, to the facts of the instant case, it can be seen

that identical factual situation has also arisen in this case. There is no manner of doubt and it has come in evidence that the Accused himself has shown his willingness to show the house where the weapons were concealed by him and he has taken the I.O. to the said house which was opened by his father, who was residing probably all alone. The matter did not rest there, he removed the heaps of waste, then found out and showed the bags which contained all the lethal weapons. Therefore, the contention that there is no evidence to show the ownership of the house from where weapon was recovered, and therefore, the prosecution case cannot be believed, is absolutely found meritless and it has to be repelled and accordingly it is repelled.

37. It is also feebly contended by Mr. Panchal that P.P.Asari, Dy. S.P., S.I.T., A.T.S., Ahmedabad has filed affidavit before the Supreme Court of India in S.L.P. (CRL) No. 2524 of 1995 on 9.1.1996 in connection with application for bail moved by another accused – Mohamad Rafiq Abdul Rahim Shaikh, wherein, it is inter alia stated by him that weapons seized from accused Mohamad Rafiq Abdul Rahim Shaikh were used in committing murder of Bhagwandas Dwarkadas Sindhi in I.C.R.No. 161/1993 and therefore, discovery panchnama made at the instance of Accused is nothing but a fabricated document. According to us the aforesaid contention is devoid of any merits. It may be noted that the affidavit filed

for the purpose of opposing the bail application filed by the accused Mohamad Rafiq Abdul Rahim Shaikh cannot supersede the substantive evidence available on record before the trial Court and relying on the said affidavit it cannot be concluded that two views are possible in the present case.

38. Mr. J.M.Panchal, learned advocate of the Accused, contended that even if the prosecution evidence is accepted, in that case also, there is no evidence to show that the weapon was used by the Accused in commission of the offence in question nor are there circumstances which would lead to a legitimate inference that the Accused must have used the weapon for commission of the offence, and therefore, the benefit of doubt must be given to the Accused. In support of the aforesaid contention, he relied upon the unreported decision dated 22.12.2006 of a Division Bench of this Court (Coram: A.L.Dave and Bankim N. Mehta, JJ) rendered in Criminal Appeal No. 1081 of 1999. By referring to the aforesaid decision of this Court, it is submitted by him that the facts of the unreported decision are identical to the facts of this case, therefore, relying upon the said decision, the Accused in the instant case may be given benefit of doubt.

39. We have gone through the unreported decision rendered by the Division Bench of this Court, relied upon by Mr. J.M.Panchal, learned advocate

of the Accused. In paragraph 18 of the said judgment, the Division Bench of this Court has held as under:

"18. It also deserves consideration that, according to the prosecution, a conspiracy was hatched by a group of persons and three of whom came to be charge sheeted. One of the three persons charge sheeted applied for discharge and was discharged. Out of the two persons tried, one has been acquitted, although the prosecution case is that the accused, who was acquitted, in company of the appellant, had gone to the place on a motorcycle and fired shots at the deceased. If the very foundation of genesis of the prosecution case is not proved by the prosecution, then we deem it very risky to infer involvement of the appellant in the offence on basis of remote and non-existent circumstances and confirm the conviction."

A perusal of the above quoted paragraph, it is seen that in the said judgment two persons were tried and one has been acquitted, although the prosecution case is that the accused, who was acquitted, in company of the appellant, had gone to the place on a motorcycle and fired shots at the deceased and, therefore, if the very foundation of genesis of the prosecution case is not proved by the prosecution, the Division Bench thought it very risky to infer involvement of the Accused in the offence on basis of remote and non-existent circumstances and confirmed the conviction.

40. The aforesaid judgment is distinguishable so far as the case on hand is concerned. From the very beginning, the charge is against the Accused, who fired shot from his revolver and thereafter, at his instance, the said revolver along with other lethal weapon was recovered by drawing discovery panchnama. Therefore, the judgment relied upon by Mr. J.M.Panchal, learned advocate of the Accused, is of no assistance to advance the case to render benefit of doubt to the Accused. Besides this, if we accept the proposition canvassed by Mr. J.M.Panchal, learned advocate of the Accused, that there must be evidence to show that the weapon was used by the Accused for commission of the offence in question, then it would be a case of evidence of eye witness and not the circumstantial evidence. If that evidence is available, then the prosecution did not require to prove the case on the basis of the circumstantial evidence. In view of our conclusion as aforesaid, the aforesaid contention also cannot be countenanced and therefore, the same is rejected.

41. On reappraisal of the evidence on record, this Court finds that the complicity of the Accused in the murder of Bhagwandas Dwarkadas Sindhi stands firmly established. The following are the salient points which have come in evidence and are duly proved by the prosecution beyond doubt:

(A) Bullet taken out from the dead body of Bhagwandas Dwarkadas Sindhi and forwarded to

F.S.L.for having scientific examination (that was marked as bullet 'I').

(B) According to Dr. Dilip Desai who conducted autopsy, Bhagwandas died on account of injury sustained by bullet.

(C) During the course of investigation in another C.R. Number i.e. 60/94 of Gaekwad Haveli Police Station, at the behest of the Accused, revolvers and cartridges etc. were seized under panchnama.

(D) The ballistic expert has given definite opinion that bullet mark 'I' which was taken out from the dead body of deceased Bhagwandas Dwarkadas Sindhi was fired from the revolver mark 'A' seized under panchnama.

(E) PW-14 U.T.Brahmbhatt has no reason to implicate false person in connection with the present crime, as at a relevant time he was collecting evidence in connection with I.C.R. No. 60/94 of Gaekwad Haveli Police Station.

(F) The place shown by the Accused is the upper floor (second floor), from the scrap lying there a suitcase, containing weapons etc. wrapped in a bed sheet was brought out. The place is not open and accessible, otherwise even with due diligence and exploration police could not have recovered these articles. Thus, clue in fact was furnished by the Accused. The place is such that only the Accused must have knowledge of it.

(G) PW-13 – Jitendrakumar Rambhai Patel has stated in his evidence that no articles were recovered in his presence, however, he has admitted his signature along with the signature of another panch on panchnama and slips. This aspect is not sufficient to discredit the recovery of revolvers and cartridges as enumerated by PW-14 U.T.Brahmbhatt.

(H) The suitcase containing illegal weapons, revolvers etc. of foreign make and not easily available. Such articles are not common in use.

(I) The quantity of weapons and cartridges is huge. The estimated value as shown in panchnama exh. 262 is at the tune of Rs,.6,25,000/-.

(J) The discovery was made during the night, and it was the Accused, who took them to the particular place where arms etc. were kept and concealed in wrapped suit case.

(K) At the relevant time his aged father Abdulmajid Baloch was present, who opened the door. Therefore, it cannot be said that the accused had nothing to do with house in question.

(L) As regards the article recovered, an inculpatory statement was made by the Accused in police custody. Such statement is admissible u/s. 27 of Evidence Act, which relates distinctly to the fact thereby discovered.

(M) The Accused has not offered any explanation,

even probable explanation as regards the possession of arms or as regards incriminating revolver 'A' except that 67, Nandan Society is occupied by one Bharat Vanechandbhai.

42. On re-appreciation, re-evaluation, re-analysis and close scrutiny of the evidence, according to us, the circumstances pitted by the prosecution to prove the guilt of the Accused are duly established and all the circumstances unerringly pointing towards guilt of the Accused and the circumstances taken cumulatively form a complete chain that there is no escape from the conclusion that within all probability the crime was committed by the Accused and none else, and there cannot be another view than the view expressed by the trial Court.

43. We find ourselves in complete agreement with the findings, ultimate conclusion and resultant order of conviction and sentence passed by the trial Court, as according to us, no other finding, conclusion or order except the one reached by the trial Court is possible on the evidence adduced by the prosecution and on the facts and in the circumstances emerging from the record of the case.

44. In the wake of the aforesaid, we do not find any merit in this Appeal, therefore, we are not inclined to interfere with the judgment and order of conviction and sentence recorded by the trial Court. The instant Appeal lacks merit and deserves to be dismissed.

45. For the foregoing reasons, the Appeal fails and accordingly it is dismissed. The result of which is that the judgment and order dated 19.8.1999 convicting the Accused for committing murder of Bhagwandas Dwarkadas Sindhi punishable under Section 302 of IPC and sentencing him to imprisonment for life, is hereby confirmed and maintained.

(A.M.Kapadia,J)

(H.N.Devani,J)

Jayanti*